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# In the Supreme Court of the United States

OCTOBER TERM, 1947

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No. 691

CHICAGO MINES COMPANY, PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE

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No. 692

THE LONDON EXTENSION MINING COMPANY, AS TRANSFEREE OF CHICAGO MINES COMPANY, PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE

---

No. 693

THE LONDON EXTENSION MINING COMPANY, PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE

---

*ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT*

---

**BRIEF FOR THE RESPONDENT IN OPPOSITION**

### OPINIONS BELOW

The opinion of the Tax Court (R. 9–21) is reported at 7 T. C. 1103. The opinion of the Circuit Court of Appeals (R. 61–66) is reported at 164 F. 2d 785.

### JURISDICTION

The judgments of the Circuit Court of Appeals were entered on November 6, 1947. (R. 67–68.) A petition for rehearing (R. 69–80) was filed on November 26, 1947, and was denied on January 8, 1948 (R. 125). The petitions for writs of certiorari were filed on March 25, 1948. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

### QUESTIONS PRESENTED

A dump of discarded waste material and low-grade ore was created on the surface of the land by a former operator of a mine. One of the taxpayers, London Company, which also had an ownership interest in the mining property, acquired the working lease to the underground mine and, as an incident to the lease, the right to work the dump. During a portion of the taxable period, it granted to its wholly owned subsidiary, a lease entitling the subsidiary to sort and mill the contents of the dump. During the remaining portion of the taxable period, the London Company worked the dump itself.

1. Did the Circuit Court of Appeals err in holding that the dump was not a mine under Section 23 (m) of the Internal Revenue Code and that no deduction for depletion with respect to it could be taken by the London Company, since the dump was not created by it and was not operated as an integral part of its underground mining operations?

2. Did the Circuit Court of Appeals err in holding that the subsidiary, which did not even have a collateral interest in any mining property, was not entitled to a depletion deduction on its operations in sorting and milling the contents of the dump?

## STATUTES AND REGULATIONS INVOLVED

The applicable provisions of the statutes and regulations involved are set forth in the Appendix, *infra*, pp. 16–23.

## STATEMENT

These cases were consolidated before the Tax Court. The facts were stipulated (R. 7–8, 36, 47–49) and the Tax Court made its findings in accordance with the stipulations (R. 10). The facts, which are pertinent to the three cases here involved, may be summarized as follows:

The taxpayer, Chicago Mines Company, referred to as Chicago Company, was a corporation organized in 1937 under the laws of the State of Colorado. The taxpayer, The London Extension Mining Company, referred to as London Com-

pany, is a corporation organized in 1925 under the laws of the State of Colorado. Chicago Company was a wholly-owned subsidiary of the London Company (R. 10.)

The London Company owns an undivided one-half interest in the American, Fraction, Huron and Ibex lode mining claims in Park County, Colorado. The remaining one-half interest in the American claim is owned by a group of individuals sometimes called the Ellis heirs. The remaining undivided one-half interests in the Fraction, Huron and Ibex claims are owned by The London Mines and Milling Company, a corporation having no relationship with London Company. London Company acquired its undivided one-half interest in the American claim on October 11, 1929, and its undivided one-half interests in the Huron, Fraction and Ibex claims in 1926 and 1927. These claims collectively are known as the American Mine . (R. 10–11.)

Amer Mining Company, a Colorado corporation, obtained a lease from the Ellis heirs, the taxpayer London Company, and The London Mines and Milling Company to prospect and mine certain blocks of the American, Fraction and Ibex claims and to extract ore therefrom. This lease was successively assigned to W. A. Ellis, Inc., and thence to the taxpayer London Company on or about June 7, 1940. During the period 1930 to May, 1940, the Amer Mining Com-

pany in connection with its operation of the American Mine under the lease shipped the high-grade ore and placed the resulting waste material and low-grade ore upon the surface of the ground, thus creating the American dump. The greater portion of this dump was placed upon the surface of the Fraction claim, smaller portions being on the surface of the American and Huron claims, all these claims being contiguous. (R. 11.)

Taxpayer, Chicago Company, entered into a lease with London Company on June 10, 1940, under which Chicago Company immediately thereafter proceeded to mill that part of the American dump which could be sorted and milled at a profit, until October 8, 1940, when Chicago Company was dissolved. The lease provided, *inter alia,* that the London Company, owner of the American Waste Dump, leased it to Chicago Company, in consideration of royalties of twenty per cent of net smelter and mint returns; and that Chicago Company could use the buildings and equipment on the claim to house and board men, and could remove, during or at the end of the lease, any equipment and supplies belonging to it. The party signing as president of the Chicago Company also signed as secretary of the London Company, and the vice president of London Company signed as secretary of Chicago Mines. No other officers signed the lease. From October 8, 1940, to the end of that year, London

Company itself carried on the working and milling of the American dump. From June 7, 1940, London Company also carried on underground mining operations under its leases until August 20, 1940, when its lease from the Ellis heirs expired, and for the remainder of 1940 continued to operate under the Colorado co-owner statute (3 Colorado Statutes Annotated, c. 92, Secs. 8 to 16). (R. 11–12.)

Chicago Company, in its income tax return filed for the year June 1, 1940, to May 31, 1941, deducted percentage depletion of $10,150.34, which sum represents fifteen per cent of its gross income, after deduction of royalties, from its operation and milling of the American dump. This amount did not exceed fifty per centum of the net income of Chicago Company from the American dump. (R. 12.) Its tax liability is involved in the petition filed in No. 691.

The corporate life of Chicago Company expired October 8, 1942, and all its assets previously were transferred to its parent company, London Company, and the capital stock held by the parent company and the qualifying shares held by its directors were at that time canceled and surrendered. (R. 12.)

The London Company is liable as a transferee for any deficiency in income tax for the taxable year June 1, 1940, to May 31, 1941, and any deficiency in excess profits tax for the taxable

period June 1, 1940, to October 8, 1940, that may be determined against Chicago Company, together with interest as provided by law. (R. 12.) Its tax liability, as transferee, is involved in the petition filed in No. 692.

As a result of London Company's working of the American dump during 1940, it realized $57,014.58 as its net smelter returns after deducting marketing and transportation costs. It also received $16,917.23 as royalties under its lease to Chicago Company on the dump. It also received $22,638.45 as its net smelter returns on its underground mining operations of the American Mine. London Company claimed depletion in its return; and it is agreed that if it be decided that London Company is entitled to depletion on the operation of the American dump and that the operations of the dump and the American Mine constitute one mining property, then London Company would be entitled to $14,485.54 disallowed depletion (i. e., American Mine $3,395.77, American dump $8,552.19, American dump royalties $2,537.58). (R. 12–13.) Its own tax liability is involved in the petition filed in No. 693.

The only questions that were required to be passed on by the Tax Court related to the deductions for depletion which had been claimed by the taxpayers, other matters having been abandoned. The Tax Court upheld the Com-

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missioner's deficiency determinations. The Circuit Court of Appeals (R. 61–66) affirmed the decisions of the Tax Court.

ARGUMENT

1. The decisions below are correct in denying any deduction for depletion to the taxpayers who derived income from operating a dump composed of discarded waste materials and low-grade ore deposited on the surface of the ground by a former mine operator. The statutory deduction for depletion in Section 23 (m) of the Internal Revenue Code, Appendix, *infra*, is granted only "In the case of mines * * * and * * * other natural deposits * * *." An artificially created pile of materials, even though it contains some mineral elements, is not a mine within the intendment of the statute, and a taxpayer who earns income by processing discarded materials previously removed from a mine by another, and who had no connection with severing these materials from the natural deposit in which they previously had been incorporated, is not engaged in a mining operation. The deduction for the depletion of a capital investment in a natural resource was never intended to be granted to a taxpayer who is merely processing the output of a mine. *Consolidated Chol. G. & S. M. Co.* v. *Commissioner,* 133 F. 2d 440 (C. C. A. 9th); *Atlas Milling Co.* v. *Jones,* 115 F. 2d 61 (C. C. A. 10th), rehearing denied, 115

F. 2d 64, certiorari denied, 312 U. S. 686; *Britt* v. *Commissioner,* 43 B. T. A. 254; cf. *Helvering* v. *Bankline Oil Co.,* 303 U. S. 362.

In the present case, Chicago Company was a lessee having rights only in relation to milling and sorting the dump, and in recovering further mineral wealth from previously mined ores. It stands in a position comparable with that of the taxpayer in *Helvering* v. *Bankline Oil Co., supra,* which was engaged in processing casinghead gasoline at the mouths of wells where natural gas was produced. It was held that the taxpayer there had no interest in the wells, that it was not engaged in producing the mineral product for which the deduction for depletion is granted, and that, as a processor of a mineral product, it was not entitled to any part of the allowance granted for depletion. The petitioners in the present case stand in a weaker position than the taxpayer in the *Bankline* case, for there the process of extracting the gasoline and of transforming the wet gas into saleable dry gas, was directly associated with the production by the well operators of the wet gas from the wells. The taxpayers here, in sorting and milling the contents of the dump, were not even engaged in any processing directly connected with the mining production carried out in prior years by the then mine operator. The taxpayers are not entitled to a deduction for percentage depletion with respect to the income which

they derived from operating the dump for the plain reason that they are not thereby engaged in operating a mine or deriving income from any mining operations.

2. There are no conflicting decisions respecting the issue raised by the petition in No. 691, involving Chicago Company, or in No. 692, representing the transferee liability of London Company for the same tax deficiency involved in No. 691. The Circuit Courts of Appeals for the Ninth and Tenth Circuits are fully agreed that a taxpayer who has no interest of any character in an underground mine is not entitled to a deduction for depletion when it possesses rights only with respect to the recovery of minerals from an artificially created deposit containing ores which had been mined previously. *Consolidated Chol. G. & S. M. Co.* v. *Commissioner, supra; Atlas Milling Co.* v. *Jones, supra.*

On the assumption that the taxpayer, London Company, would be entitled to depletion on its income from the dump, an assumption with which we cannot agree, it is asserted that Chicago Mines becomes entitled to the deduction because it was a subsidiary of the London Company which owned all of its capital stock. (Pet. 8–9, Br. 28–33.) This contention is opposed by the uniform decisions of this Court to the effect that a corporation which is engaged in conducting a business is a distinct taxpayer from its stockholders, even

where all the stock is owned by one shareholder, and that no merging of their affairs can affect any tax consequences where sham or fraudulent transactions are absent. *Moline Properties* v. *Commissioner,* 319 U. S. 436; *Interstate Transit Lines* v. *Commissioner,* 319 U. S. 590; *United States* v. *Joliet & Chicago R. Co.,* 315 U. S. 44; *Higgins* v. *Smith,* 308 U. S. 473; *New Colonial Co.* v. *Helvering,* 292 U. S. 435; *Burnet* v. *Commonwealth Imp. Co.,* 287 U. S. 415; *Edwards* v. *Chile Copper Co.,* 270 U. S. 452. Nor is there any exception to these principles where the subsidiary is supposed to be (Br. 29) "a mere department" of the parent. If there were such an exception, the Tax Court's findings (R. 15–16) that there was no essential identity between the two corporations would, nevertheless, be conclusive. The relationship of a subsidiary corporation to its parent, moreover, is not one of the "peculiar conditions" under which Section 23 (m) provides that the deduction is to be granted, nor has it ever been recognized in the Commissioner's regulations, promulgated under the express terms of Section 23 (m). (cf. Br. 21, 28–33.)

3. The taxpayer, London Company, either with respect to the royalties which it received from Chicago Company's operation of the dump, or with respect to the income which it later derived from its own operations, was also not engaged in operating a mine and was not entitled to any

deduction for depletion. While it, unlike Chicago Mines, had an interest in the underground mine (its interest arising from a partial ownership of the mining claims and also from the acquisition of the operating lease to the underground mine), the dump was created by a previous operator who discarded the waste materials and low-grade ore, and the dump was worked by Chicago Company and later by London Company separate and apart from the underground mining which London Company was conducting. These two distinct functions being carried on by the London Company cannot be merged, and the character of the income received by it from the contents of the dump cannot be altered by the fact that it was separately engaged in operating a mine, and by the coincidental factor that the dump was created by a former operator of the same underground mine. Where the two are not an integral part of the mining operation which he performs, the income from a distinct processing function is not depletable and does not become so because the processor also happens to be the operator of a mine. He is entitled to percentage depletion only on the gross income derived from the mining operations conducted with respect to the natural mineral deposits. Section 114 (b) (1), (4), Internal Revenue Code, Appendix, *infra;* Treasury Regulations 103, Sec. 19.23 (m)–1 (b), Appendix, *infra;* cf. *Helvering* v. *Mountain Producers Corp.,* 303 U. S. 376, 382. The deduc-

tion is granted to a taxpayer only to the extent that he derives income from the process of extracting mineral wealth from their natural deposits and whose capital investment is depleted as the natural deposit is depleted. *Kirby Petroleum Co.* v. *Commissioner,* 326 U. S. 599, 603–604; *Burton-Sutton Oil Co.* v. *Commissioner,* 328 U. S. 25, 34–35.

While the decision below is asserted to be in conflict with decisions of this Court (Pet. 10), we believe that the cases relied on are so clearly without any significant bearing on the issue here as to warrant no discussion of them.

The court below did not recognize that a conflict exists between the decision in this case and the rulings of the Circuit Court of Appeals for the Ninth Circuit. It noted that *Consolidated Chol. G. & S. M. Co.* v. *Commissioner, supra,* was decided by the Ninth Circuit in harmony with the rule of the Tenth Circuit which had previously been applied in *Atlas Milling Co.* v. *Jones, supra,* and which was again followed in the present case. The court below also referred to *Commissioner* v. *Kennedy Min. & M. Co.,* 125 F. 2d 399 (C. C. A. 9th), and *New Idria Quicksilver Min. Co.* v. *Commissioner,* 144 F. 2d 918 (C. C. A. 9th), on which the taxpayers rely for the asserted conflict in decisions, and stated (R. 65):

> Our analysis of these decisions by the Ninth Circuit leads us to conclude that it adheres to the principle that a taxpayer,

> working a dump, may take depletion allowances only in those cases in which the operation is an integrated step in a mining operation, and which is the final step in the process which had its beginning when the ore was removed from the original vein.

In the *Kennedy* case, the taxpayer was the owner and operator of a mine and had itself created a tailings dump which it reworked during the taxable years by means of an improved process which it also employed in connection with its newly mined ores. In the *New Idria* case the taxpayer again was the owner and operator of a mine. As a result of previous operations by former operators, there were deposits of discarded ore on the surface of the land from which the taxpayer was able to recover additional amounts of mercury by means of an improved process which it also employed in connection with the newly mined cinnabar ore from its mines. In both cases the court held that taxpayers were entitled to the allowance for depletion with respect to the retreated ores as well as those newly mined.

Although we think that the *Kennedy* and *New Idria* cases were decided incorrectly, there are differences between them and the present case, and the court below thought that its decision was distinguishable. Moreover, the decision be-

low is fully in harmony with the decisions of this Court.

## CONCLUSION

The decision below is correct. There are no conflicting decisions or other factors which would warrant further review by this Court of the judgments for which the petitions were filed in Nos. 691 and 692, and those petitions should be denied. The judgment in No. 693 may be out of harmony with the principles applied by the Circuit Court of Appeals for the Ninth Circuit, but the cases were regarded as distinguishable by the court below, and the decision below is completely in accord with the decisions of this Court. The petition in No. 693 should also be denied.

Respectfully submitted.

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APRIL 1948.

## APPENDIX

Internal Revenue Code:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(m) *Depletion.*—In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Commissioner, with the approval of the Secretary. * * * In the case of leases the deductions shall be equitably apportioned between the lessor and lessee. * * *

(26 U. S. C. 1940 ed., Sec. 23.)

SEC. 114. BASIS FOR DEPRECIATION AND DEPLETION.

* * * * *

(b) *Basis for Depletion.*—

(1) *General rule.*—The basis upon which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 113 (b) for the purpose of determining the gain upon the sale or other disposition of such property, except as provided in paragraphs (2), (3), and (4) of this subsection.

* * * * *

(4) [as amended by Section 145 of the Revenue Act of 1942, c. 619, 56 stat. 798, and Section 124 of the Revenue Act of 1943, c. 63,

58 Stat. 21] *Percentage depletion for coal, fluorspar, flake, graphite, vermiculite, beryl, feldspar, mica, talc, lepidolite spodumene, barite, ball and sagger clay, rock asphalt, and metal mines, potash, and sulphur.—*

(A) *In general.*—The allowance for depletion under section 23 (m) shall be, in the case of coal mines, 5 per centum, in the case of metal mine, fluorspar, flake graphite, vermiculite, beryl, feldspar, mica, talc, lepidolite, spodumene, barite, ball and sagger clay, or rock asphalt mines, and potash mines or deposits, 15 per centum, and in the case of sulphur mines or deposits, 23 per centum, of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance under section 23 (m) be less than it would be if computed without reference to this paragraph.

(B) *Definition of Gross Income From Property.*—As used in this paragraph the term "gross income from the property" means the gross income from mining. The term "mining", as used herein, shall be considered to include not merely the extraction of the ores or minerals from the ground but also the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products. The term "ordinary treatment processes", as used herein, shall include the following: (i) In the case of coal—clean-

ing, breaking, sizing, and loading for shipment; (ii) in the case of sulphur—pumping to vats, cooling, breaking, and loading for shipment; (iii) in the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, and sintering to bring to shipping grade and form, and loading for shipment; and (iv) in the case of lead, zinc, copper, gold, silver, or fluorspar ores, potash, and ores which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but not including as an ordinary treatment process electrolytic deposition, roasting, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore, including the furnacing of quicksilver ores. The principles of this subparagraph shall also be applicable in determining gross income attributable to mining for the purposes of section 731 and 735.

* * * * *

(26 U. S. C. 1940 ed., Supp. V, Sec. 114.)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

SEC. 19.23 (m)–1. *Depletion of mines, oil and gas wells, other natural deposits, and timber; depreciation of improvements.*—Section 23 (m) provides that there shall be allowed as a deduction in computing net income in the case of mines, oil and gas wells,

other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements. Section 114 prescribes the bases upon which depreciation and depletion are to be allowed.

Under such provisions, the owner of an economic interest in mineral deposits or standing timber is allowed annual depletion deductions. An economic interest is possessed in every case in which the taxpayer has acquired, by investment, any interest in mineral in place or standing timber and secures, by any form of legal relationship, income derived from the severance and sale of the mineral or timber, to which he must look for a return of his capital. But a person who has no capital investment in the mineral deposit or standing timber does not possess an economic interest merely because, through a contractual relation to the owner, he possesses a mere economic advantage derived from production. Thus, an agreement between the owner of an economic interest and another entitling the latter to purchase the product upon production or to share in the net income derived from the interest of such owner does not convey a depletable economic interest.

* * * * *

(b) A "mineral property" is the mineral deposit, the development and plant necessary for its extraction, and so much of the surface of the land only as is necessary for purposes of mineral extraction. The value of a mineral property is the combined value of its component parts.

* * * * *

(f) [as amended by T. D. 5210, 1943 Cum. Bull. 140, T. D. 5413, 1944 Cum.

Bull. 124, and T. D. 5461, 1945 Cum. Bull. 284] The term "gross income from the property," as used in sections 114 (b) (3) and 114 (b) (4) (a) and sections 19.23 (m)-1 to 19.23 (m)-28 [articles 23 (m)-1 to 23 (m)-28 of Regulations 101, 94, and 86, and articles 221 to 248 of Regulations 77], inclusive, means the following:

In the case of oil and gas wells, "gross income from the property" as used in section 114 (b) (3) means the amount for which the taxpayer sells the oil and gas in the immediate vicinity of the well. If the oil and gas are not sold on the property but are manufactured or converted into a refined product prior to sale, or are transported from the property prior to sale, the gross income from the property shall be assumed to be equivalent to the representative market or field price (as of the date of sale) of the oil and gas before conversion or transportation.

In the case of a crude mineral product other than oil and gas, "gross income from the property," as used in section 114 (b) (4) (a) means the gross income from mining. The term "mining" as used herein includes not only the extraction of ores or minerals from the ground but also the ordinary treatment processes which are normally applied by the mine owners or operators to the crude mineral product after extraction in order to obtain the commercially marketable mineral product or products.

If the taxpayer sells the crude mineral product of the property in the immediate vicinity of the mine, "gross income from the property" means the amount for which such product was sold, but, if the product is transported or processed (other than by

the ordinary treatment processes described below) before sale, "gross income from the property" means the representative market or field price (as of the date of sale) of a mineral product of like kind and grade as beneficiated by the ordinary treatment processes actually applied, before transportation of such product. If there is no such representative market or field price (as of the date of sale), then there shall be used in lieu thereof the representative market or field price of the first marketable product resulting from any process or processes (or, if the product in its crude mineral state is merely transported, the price for which sold) minus the costs and proportionate profits attributable to the transportation and the processes beyond the ordinary treatment processes.

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation, other than the computation of profits proportionate to costs, clearly reflects the gross income from the property, then such gross income shall be computed by the use of such other method.

The term "ordinary treatment processes," as used herein, shall include the following:

(1) In the case of coal—cleaning, breaking, sizing, and loading for shipment;

(2) In the case of sulphur—pumping to vats, cooling, breaking, and loading for shipment;

(3) In the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, and sintering to bring to shipping grade and form, and loading for shipment;

(4) In the case of lead, zinc, copper, gold,

silver, or fluorspar ores, potash, and ores which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization precipitation, or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore. The furnacing of quicksilver ores is included in the term "ordinary treatment processes." The following processes are not included in the term "ordinary treatment processes": electrolytic deposition, roasting, thermal or electric smelting, refining, or substantially equivalent processes.

In case any of the ordinary treatment processes are not applied in the immediate vicinity of the mining district in which the mine is located, costs incurred for transportation to the processing location and, if transported by the taxpayer, the proportionate profits attributable to transportation, should be subtracted from the sale price of the product to determine "gross income from the property." If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation, other than the computation of profits proportionate to costs, clearly reflects the gross income from the property, then such gross income shall be computed by the use of such other method.

In all cases there shall be excluded in determining the "gross income from the property" an amount equal to any rents or royalties which were paid or incurred by the taxpayer in respect of the property and are not otherwise excluded from the "gross

income from the property." If royalties in the form of bonus payments have been paid in respect of the property in the taxable year or any prior years or if advanced royalties have been paid in respect of the property in any taxable year ending prior to December 31, 1939, the amount excluded from "gross income from the property" for the current taxable year on account of such payments shall be an amount equal to that part of such payments which is allocable to the product sold during the taxable year. If advanced royalties have been paid in respect of the property in any taxable year ending on or after December 31, 1939, the amount excluded from "gross income from the property" for the current taxable year on account of such payments shall be an amount equal to the deduction for such taxable year taken on account of such payments pursuant to section 19.23 (m)-10 (e).

* * * * *

(h) "Crude mineral product," as used in paragraph (f) of this section, means the product in the form in which it emerges from the mine or well.

(i) "The property," as used in section 114 (b) (2), (3), and (4) and sections 19.23 (m)-1 to 19.23 (m)-19, inclusive, means the interest owned by the taxpayer in any mineral property. The taxpayer's interest in each separate mineral property is a separate "property"; but, where two or more mineral properties are included in a single tract or parcel of land, the taxpayer's interest in such mineral properties may be considered to be a single "property," provided such treatment is consistently followed.

U. S. GOVERNMENT PRINTING OFFICE: 1943